

January 4, 2024
Sl. No.4
Court No.19
s.biswas

CO 2919 of 2023

Sabyasachi Ghosh
vs.
Bimal Naskar and others

Mr. Sabyasachi Chatterjee
Mr. Omor Faruk Gazi
Mr. Bodrul Karim
Mr. Dipankar Das

... for the petitioner

The revisional application has been filed challenging an order dated August 9, 2023 passed by the learned Civil Judge (Junior Division), 1st Court at Diamond Harbour, District South 24 Parganas, in Title Suit No.477 of 2022.

By the order impugned, the learned court allowed an application for amendment of the written statement. The learned court was of the view that the amendment should be allowed upon payment of cost of Rs.500/-. According to the learned court, the amendment was an attempt on the part of the defendants to depict a clear picture with regard to the suit property and their defence case was being elaborated. The court did not find that amendment was mala fide. According to the court, the defendants were to prove the facts averred in evidence. The correctness of such contentions of the defendants were not to be decided at the stage of allowing the application for amendment

Mr. Chatterjee, learned advocate appearing for the plaintiff, submits that the amendment should not be allowed for the following reasons:-

- a) The averments made in the amendment were contrary to those made in the written statement;
- b) The nature and character of the suit was changed;
- c) Other persons as also the government were stated to be necessary parties in the suit;
- d) The original suit was between the plaintiff and the defendants. The defendants have averred possession of other persons as also the government in respect of the property in question, which has changed the nature and character of the suit.

According to Mr. Chatterjee, the incorporation of such facts would compel the plaintiff to transform the present suit, to a suit against other persons as also the government.

Heard Mr. Chatterjee.

The plaintiff filed a suit for declaration and injunction. The plaintiff also filed an application under Order 39 Rules 1 and 2 of the Code of Civil Procedure. By an ad interim order, the defendants were restrained from interfering with the peaceful possession of the plaintiff in respect of the suit

property, as mentioned in the schedule. The suit property was previously a Doba and thereafter the nature changed to Danga. The same has been delineated in the map of the plaint, in red ink as 'A' 'B' 'C' & 'D'. The area measures about 3.75 decimals out of 9 decimals comprised within L.R. plot no. 98, under L.R. Khaitan no. 445, within Mouza Daulatabad, P.S. Mathurapur, District South 24 Parganas.

The plaintiffs claimed right, title and interest in respect of the suit property, through his predecessors. According to the plaintiff, the defendants were encroaching the said suit property and were also trying to change the nature and character of the suit property. Prayers were made for declaration that the defendants did not have any right, title and interest in respect of the suit property, permanent injunction, cost, etc.

The defendant Nos.1 to 6 and 7 filed a written statement and denied the right, title and interest of the predecessors of the plaintiff. In paragraph 14 of the written statement it has been stated that the suit plot runs from east to west. On the northernmost side of the suit plot there was a non - concrete road. To the southern side of the road, there was a government 'khal'. The said 'khal' and the road were a part of R.S. Daag no. 97. There was also another

non-concrete road to the western side of the suit plot.

A one storeyed construction was being run as a fruit shop. It was situated in R.S. Daag no. 98. R.S. Daag no 97 belonged to the Government. Defendant no. 7 was the owner and occupier of the said shop. On the eastern side of the said shop, there were other shop rooms, owned by different people. On the western side of the shop of the defendant no. 7, there was a low and vacant swamp.

There was a bamboo stage measuring 20 feet x 20 feet on the government 'khal', i.e., non-suit R.S. Daag No. 97 (acquired land of the West Bengal government), which was on the northern side of R.S. Daag No. 98.

The market committee constructed the bamboo stage on the acquired land of the Government of West Bengal and conducted various cultural programs for about 40 years, under the management of "Sudhir Ghat Kalitala Byabsahi Samiti o Grambasi Brindya" and the committee also conducted Durga Puja. The idol was then immersed in the government 'khal'. Defendants No. 1-6 were the members of the above committee.

The 'Khal' and the non - concrete road on the northern most side of the plot were not a part of the suit plot. The 'Khal' and the government road were a

part of the non-suit R.S. Daag No. 97. The plaintiffs were not in possession of the said plot.

The Government of West Bengal and the P.W.D. were necessary parties in the present suit. The vacant land of R.S. Daag No. 98 which was located to the south of the non-suit R.S. Daag No.97 was the swamp. The plaintiff had no possession over the said swamp.

Such averments were sought to be corrected and elaborated by the amendment. The defendants wanted to delete the second sentence/the second line of paragraph 14 of the written statement. Omission of the sentence that there was a 'khal' on the southern side of the road, does not change the nature and character of the suit.

By way of a further amendment in paragraph 14, the 9th line was sought to be deleted and replaced by some clarificatory facts. The defendants wanted to add that on the Southern part of the non-suit R.S. Daag No. 97 and northern part of the suit R.S. Daag No. 98, the defendants no. 1 -6 who were the villagers and the businessmen of Sudhir Ghat Kalitala Bazaar built a bamboo altar, and placed the idol of the Goddess at its southern door. They constructed a bamboo stage and conducted various cultural events at such place. The plaintiff had no possession of the said land. The land claimed by the

plaintiff was a part of the non-suit R.S. Daag No.97. The land in the northern part of the suit R.S. Daag No.98 had been acquired by the government. There were various shops on the land acquired by the Government in the names of Tapas Halder, Balai Mukherjee and Ashok Gayen. A notice had been sent by the P.W.D. asking them to remove the illegal encroachment from the acquired land. The defendants had a copy of the said notice. The said notice shall be used in evidence. The Government of West Bengal and the P.W.D. were necessary parties in the present suit

In my view, the defendants did not raise any contrary pleas to what was already stated in the written statement, but added some additional facts and further details of the stand of the defendants. The ownership of the government and PWD were mentioned in the written statement.

As a general rule, amendment of a written statement should be allowed much more liberally than amendment of a plaint. The instant amendment is not time barred. The amendment is not in conflict with what had already been stated in the written statement. The amendment is necessary for adjudication of the dispute. The dispute is with regard to the encroachment of the suit property by the defendant nos.1 to 6. The defendants have

denied such allegation and they have elaborated how they were members of a particular committee which had been using the area for cultural activities for more than 33 years and the government 'khal' was used for immersion of the Goddess Durga.

Under such circumstances, there is no requirement to interfere with the order impugned. The correctness of the averments made in the amendment application or the truth and veracity of the same, shall be decided in the suit and in evidence. The plaintiff is at liberty to file a replication/rejoinder to the amended written statement.

The revisional application is accordingly disposed of.

All the parties are directed to act on the basis of the server copy of the order.

Urgent Photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Shampa Sarkar, J.)